**Al-Baraka Banking Group**
**Department of Research & Development**

# *Shariah Opinion (Fatwa)*
# *On*
# *Istisna', Contracting & Salam*

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***In the name of Allah, the merciful, the compassionate***

## Introduction

Praise be to Allah, the lord of the universe, peace and prayers be upon the righteous Imam our prophet and messenger Mohammad, peace and blessings be upon him ,his family and companions.

Al-Baraka Banking Group (ABG) is pleased to present this English version of the book entitled (**Shariah Opinion (Fatwa) On Istisna', Contracting & Salam)** to the Islamic banking and economics library**,** Islamic Financial Institutions, and students and researchers in different universities and research institutes. This effort comes within a context of a wider plan which aims to translate the huge wealth of knowledge produced by the Group earlier as a result of sustained efforts in the field of development of Islamic financial and banking instruments. This endeavor also comes in a bid to introduce Islamic economics and transactions to English speaking individuals and communities parallel with recent rapid expansion and development in the field of Islamic banking and in conformity with the general objective of land reconstruction and development as well as dissemination of Islamic principles and values in economics & finance.

This book is issued as part of the series of computerized Shariah opinions (Fatwas) program whereby the series had covered Shariah opinions (Fatwas) of Murabaha, Mudharaba and Musharaka e.t.c. These Fatwas from Shariah supervisory boards of different Islamic Financial institutions were compiled, sorted and indexed in a manner that facilitates their smooth retrieval to provide easy reference for researchers.

In presenting this publication to all, Al-Baraka Banking Group would like to thank Dr.Ahmed Mohieddin Ahmed, Director of Research & Development for compiling, sorting and indexing the book's material and Dr.Abdul Sattar Abughuddah for revising the same. Also thanks to those who contributed to preparation, and supervision of this issue.

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# First: Istisna'

## 1- General provisions of Istisna'

## 1.1 General provisions of Istisna':

**Q1** : Having reviewed the researches received by The Islamic Figh Academy concerning Istisna' contracts, having listened to discussions held about it, and considering the purposes and intentions of Shariah regarding the interest of people, and the rules of Islamic Jurisprudence (Figh) regarding contracts and transactions, and putting into consideration that Istisna' contract plays an important role in encouraging industrial activities and in opening wider chances for financing and promoting Islamic Economy?

**Answer:**

The Islamic Figh Academy resolves that:

First: Istisna' contract is a contract related to provision of work and commodity on liability and is binding to both parties if it meets the basic requirements and conditions.

Second: The following conditions should be fulfilled in Istisna' contract:

A. The nature, type, amount and all the required specifications of the product to be manufactured shall be stated.
B. The time of delivery should be specified.

Third: In the Istisna' contract, it is permissible to defer the payment wholly or make it in pre-fixed installments and on specific due dates.

Fourth: The Istisna' contract may include a penalty clause if so agreed by the two contracting parties, unless case of force majeure occurs.

**Source:**

Organization of Islamic Conference (OIC), Islamic Figh Academy, Resolutions and recommendations of the Council of the Islamic Figh Academy, First to 8$^{th}$ session, Resolution no.( )

**Q2**:

Shariah opinion is sought for the question submitted by the company concerning the possibility of using Istisna' to invest its funds and ways and means to utilize this contract which has become a necessity by modern economic investment practices? What are the forms and modes accepted by Shariah in dealing with this contract?

**Answer:**

Istisna' is permissible according to Majority of Muslim jurists. It is reported that the prophet (P.B.U.H) had ordered some one to manufacture (Istisna') a ring for him. Different schools of Islamic Jurisprudence (Figh) have disputed over its permissibility as well as they differed over its applicability. Jurists who consider Istisna' permissible have agreed that Istisna' applies only to manufactured items, and hence invalid for non-manufactured objects like corn, wheat, barley or fruits. They have also agreed that it only applies to objects which their specifications can be clearly described and thus avoid ambiguity. Explicit texts reported by Hanafi school of Figh state that it is not a condition for the manufactured item (Masnu) to be of fungible(MITHLI) items which can turn into liabilities, that are of many similarities in the market by which liabilities can be satisfied without any differences. It is permissible that Istisna' be made for manufacturing of an object of valuable (Ghimi) items which are produced according to certain unprecedented specifications as per the requirements of the party to whom the commodity is to be manufactured (purchaser). However it should also be clearly specified. They have also decided that the manufacturer may purchase what others have manufactured and

hand it over to the party who ordered the manufacturing if it satisfies the required specifications. He is not duty-bound to manufacture it himself. Nowadays Istisna'a has grown in importance, its scope and applications have varied, and the need for it grew proportionate to contemporary industrial progress and with the diversification made in the field of industry in this century and the past century which prompted the need for new methods of investment compatible with shariah.

After thorough deliberations, the Shariah board has issued the following resolutions in this regard:

**First:** Istina' contract is permissible for any manufactured product that have particular specifications whether it is of use or consumer items, provided that the manufactured item is sufficiently described in Istisna' contract to the extent that avoids ignorance and ambiguity and a particular due date is set for its manufacturing & delivery. The price may either be paid in advance, deferred or in installments.

**Second:** Thus, in this case the contract becomes binding to both parties. The purchaser (Mustasna) is not entitled to option of inspection (Khiyar Ur-Ruyah) if the manufactured object is made in accordance with agreed upon specifications.

**Third**: Istisna' can not be effected on natural things which are not manufactured by man such as agricultural products e.g. cereals, fruits, and vegetables. The later may be sold according to conditions of Salam transaction as stated in different schools of Islamic Jurisprudence (Figh). However, such natural products, if they are subject to manufacturing that transforms them from their natural form to produce canned fruits and meat, they may be sold

and bought according to Istisna' as per the conditions stipulated in the above first point. This means that the company may purchase natural products pursuant to Salam and sell them as manufactured items under Istisna' contract.

Hence, the shariah board has concluded that Al-Rajihi Company may use Istisna' contract for all manufactured items as in the following examples:

A- The company may purchase, by means of Istisna', goods and commodities of value like vessels, furniture and carpets for a mosque or a palace of special and unique specifications, which are clearly specified in a manner that avoids ignorance and ambiguity for a particular term provided that the company pays their price on spot upon signature of the contract, defers payment or pays in installments and sells by another contract goods which it undertakes to manufacture with the same specifications as the goods which they purchased in accordance with Istisna' contract, and for a deferred term after the first due date on which it received the manufactured items. Provided that the purchaser from the company also pays the price in cash or deferred or in installments. The company, in either of the contracts whether being a purchaser or a seller, shall take and give sufficient guarantees it deems necessary.

B- Also, the company may purchase and sell, pursuant to the previously stated manner, fungible goods and commodities which are common in the market that can replace each other in use such as: chairs, and items of international standard, in addition to items which are not of international standard but are manufactured in mass production for use

or consumption in standard forms and are available in the market like homogenous textiles, standard utensils, and metallic foils such as iron or aluminum…etc. The company is entitled to enter into Istisna' contract for any type of the said items, as a seller with any party who intends to purchase mass production. It is also entitled to conclude a contract, as a purchaser, with any other party to manufacture the quantities which it undertook pursuant to the first contract and with the same specifications. In both cases it shall reach an agreement with the other party (The seller who is the manufacturer "Sani" or the purchaser who is the requester of manufacturing (Mustasnu)) provided that the price is paid in advance, deferred or in installments. In case of the company being a purchaser, the delivery of manufactured items shall be made before the delivery date in the contract in which it acts as a seller. However, under all circumstances, actions and contracts shall be made in a manner that avoids usury-based financing. It goes without saying that, it is permissible for the company to sell what it had purchased as a result of Istisna' or Salam Contract in cash, installments or deferred on one term.

**Source:**

Al-Rajhi Banking Investment corp., Shariah board Collection of Fatwas – Resolution # 48.

**Q 3:**

Please advice Shariah opinion on Istisna' contract presented by the company (copy attached)?

**Answer:**

After duly studied by Shariah board in accordance with the text attached to this resolution the contract is approved provided that certain amendments be made to ensure its Shariah compliance and avoid being a fictitious contract which transforms it into a pure finance contract and not Istisna' contract as per the resolution no. (48) which has been approved by Shariah Board for Istisna' dealings as per conditions contained in that resolution.

**Source:**

AL Rajhi Investment Banking Corp., Shariah Board collection of fatwas, Resolution No. (52).

**Q (4):**

What is the Shariah opinion regarding the question put forward by a company regarding permissibility of purchasing six Boeing Aircraft 400-737 as per a purchase contract for a specific value and in turn Al Rajhi company pays part of the purchase amount at contracting with Boeing company. Boeing Company delivers aircraft on batch basis. Also Al Rajhi signs Istisna' contract in its capacity as manufacturer with Olympic Greek company (Mustasnia party) for selling six aircraft with the same specifications according to which Al Rajhi contracted with Boeing. Olympic company pays

an advance payment provided that the remaining amount to be paid in installments corresponding with aircraft delivery.

In case of non interest of Olympic to complete its contract with AlRajhi Company and its rejection of receiving any of the six aircraft at the time of its delivery, Al Rajhi, being an agent for Olympic, as per the sale contract of aircraft rejected by Olympic will receive 2.5% of the aircraft sale price. As such Al Rajhi Company collects the sale price of these aircraft, claimed by Olympic, from the new purchaser. In case aircraft price amount exceeds the price with which Olympic purchased from Al Rajhi, the excess would be returned to Olympic, and if it is less than the amount claimed by Al Rajhi from Olympic, Al Rajhi would revert back to Olympic?

**Answer:**

Shariah Board has no objection that Al Rajhi company to execute the mentioned transaction, if the situation is identical to what has been described in the question, provided that Al Rajhi Company would bear all liabilities of the Owner such as corporeal property (Ayn) damage, maintenance expenses and property insurance until its delivery to the purchaser. Provided also no explicit or implicit usury (Riba) is implied in the transaction.

The company should provide Shariah Board with copies of authenticated contracts and documents of this transaction for due Shariah revision.

**Source:**

AlRajhi Banking investment Corp., Shariah Board collection of Fatwas – Resolution no (80).

**Q 5:**

Is it permissible to enter into the following transaction:

**First**: Al Rajhi Company purchases copper ore from a certain exporter in cash for 100 Dollars per ton, as an example. Payment would be on delivery of ore at Autocombo company site in Sweden?

**Second**: At the same time AlRajhi Company to contract with Autocombo company to refine the ore and transfer it into copper as per international specifications of the metal. The final quantity of the metal say would be 100 Tons to be delivered after 180 days i.e. on 10/6/1992 to recognized warehouses in Sweden for 50 Dollars per ton, as a refinement cost to be paid at the time of Al Rajhi Company receiving the refined metal.

**Third**: On 10/1/1992 Al Rajhi Company enters into a promise to enter into barter transaction with C.I.T.C. Company, which is a trading company owned by city Bank, according to which Al Rajhi exchanges 100 tons of copper stored in a warehouse recognized by London Metal Exchange. This exchange to be carried out on 10/6/1992.

**Fourth**: On 10/1/1992 also Al Rajhi Company sells 100 tons of copper in London Exchange to be delivered on 10/6/1992 at a price of 1150 Dollar per ton for example, through C.I.T.C. company, due to the fact that it is a recognized broker at London Exchange, considering that Al Rajhi Company is not allowed to deal directly with the Exchange.

**Fifth**: On 10/6/1992 Autocombo delivers to Al Rajhi 100 tons of copper stored in Sweden in return of metal with Al Rajhi Company paying it 50 Dollars per ton, and then Al Rajhi barters the metal with C.I.T.C. Company as per the promise made between them.

**Sixth**: Finally Al Rajhi delivers to London Metals Exchange the metal stored in warehouses accepted by London Exchange, in implementation of the sale transaction against receiving the sale value which is 1150 Dollar per ton?

**Answer:**

After the Shariah Board duly reviewed the details of this transaction, it sees no objection for the transaction to be executed by the company, provided that the sale contract by which Al Rajhi sells the copper in London Exchange through C.I.T.C. company, shall be Istisna' contract.

**Source**:

Al Rajhi Banking Investment company, Shariah Board collection of Fatwas, resolution no. (111).

**Q 6:**

Land owners apply to us to build them part of the land they own, whether it is owned fully or purchased by credit, provided that we bear all building expenses including expenditure for project execution, entering agreements with the contractor, and supervision of the contractor's execution of work in accordance with the required standards and specifications, then to receive the buildings when completed and hand them over to the land owner, on condition that we agree with the land owner on a lump sum to complete the building and deliver it to it on turnkey basis, so that it pays us 25% of this sum in advance before commencement of works, and the residual amount shall be paid on monthly or annual installments up to three years. So, what is the Shariah opinion regarding this matter?

**Answer:**

It is permissible for Kuwaiti Finance House to conclude a contract for construction to erect a building on a land owned by some body at his expense after making an agreement with the owner to pay a lump sum for this work and to give earnest money "Urbun".

Kuwait Finance House has the right to request the assistance and aid of any party it sees fit for the second construction contract and applies to each contract its specific terms and conditions. This transaction is considered Istisna' contract. Hence, it is permissible to defer payment of the price, or pay it in installments. Shariah board recommends that all necessary measures be taken to

safeguard rights of Kuwaiti Finance House whether by means of mortgage, guarantee or otherwise.

**Source:**

Shariah Fatwas in economic Issues book – part (1), (2) and 3 – Kuwait Finance House, Fatwa No. 248.

**Q (7):**

If Kuwait Finance House (KFH) is approached by some body who requested to build a housing unit or business center on a plot of land that belongs to it (KFH), provided that he is obliged to pay the amount which he and Kuwaiti Finance House agreed upon in advance, as annual rental installments for the premises on the condition that Kuwaiti Finance House enables him to use the building as soon as it is completed, and the ownership of the property is transferred to him after he pays the agreed installments. What is the Shariah opinion regarding this matter?
Can this transaction be considered deferred sale and that these installments are considered as payments of deferred sale, and not as lease payments noting that the building remains under the ownership of Kuwait Finance House till all installments are fully paid?

**Answer:**

There are two permissible ways for the provision of a building to the lessee who intends to own it in the future:
First: Either the building is leased for a particular period, and that a promise is made to sell it for a price to be agreed upon after the end of the lease period. If the lease period expires a sale contract is made in fulfillment of the promise. The promise may be specifically determined during the lease period, and if the sale contract is concluded lease shall be terminated automatically for the rest of the period.

2nd: The deferred sale shall be made according to a contract of Istisna' where the price is paid in installments and pledging the sold building as a non-possessory lien but in its property register so that the pledge is not relieved unless the price is paid in full.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and 3, Kuwait Finance House, Fatwa No. 435.

**Q (8):**

An international trading Company has requested the Islamic Bank finance exportation of phosphate ore produced in Morocco to Romania, and to finance processing of such raw materials in Romanian plants to turn them into fertilizers and other stuffs necessary for agriculture and industry.
The company shall repay the bank's debts resulting from the above mentioned two transactions by giving the bank a share of fertilizers and other materials to sell them in international markets for its benefit and the difference between financing and sale represents our net profit, please inform us about Shariah opinion concerning finance of this transaction, particularly the part of transaction which takes place in Romania, which is a communist country?

**Answer:**

The bank is authorized to enter into such transactions according to the following formula:
"The bank agrees with the producer of the raw materials so that it manufactures the raw materials and turns them into fertilizers and other products. In return for that the bank obtains a pre-agreed share of the product. The bank sells the share and receives its price". Also Shariah board has recommended that dealings should be restricted to Islamic countries and countries of the People of the Book if possible.

**Source:**

Shariah board Fatwas of Qatar Islamic Bank – Fatwa No. 17.

**Q (9):**

What is the Shariah opinion in the case of a bank that concluded an agreement with a customer to build a house or store on a land owned by the later for a cost plus pre-determined profit to be negotiated with the client considering that the construction shall be carried out by a contractor or a contracting company with which the bank agrees, and the bank will add a pre-determined profit to the contractor's price?

**Answer:**

According to Shariah opinion the cost plus profit formula is valid when a bank purchases the building materials and sells them under Murabaha transaction. However, the foresaid transaction is not in conformity with Murabaha transaction but can be processed under Istisna' contract where the bank agrees with the client on the final price without spelling out costs or profits, then the bank may conclude a separate agreement with a contractor to carry out construction.

**Source:**

Shariah board Fatwas of Qatar Islamic Bank, Fatwa No. 33.

**Q (10):**

A client applied to the bank to partially finance establishing a factory on Istisna' basis, such that the Bank enters into an agreement with a contractor for specific construction and engineering works for a specific price and it adds a certain percentage of profits on costs. The client is obligated to settle the total price for the accomplished works.

**First**: Is the above mode shariah- compatible and what are the controls to be considered?

**Second**: Due to lack of experience of the bank in that field is it permissible to appoint a consultant engineer to receive completed works from the contractor and that the contractor agrees that the engineer would approve payment of partial due amounts. Is it also allowed that the engineer could deliver finished works to the client, who is the owner of the factory?

**Third**: Is it allowed that the purchase promiser to sign invoices for any phase of the accomplished works along with the consultant before payment by the bank to the contractor and release the bank of any future liability?

**Fourth**: In this case is the bank responsible for any invisible defect?

**Answer:**

**First**: For any Istisna' contract to be intact it should be specified and hence the Islamic Bank is permitted to enter into Istisna' contract provided that it will be responsible for any invisible defect and also provided that guarantees are taken to ensure the right of the Islamic Bank to revert to the contractor in case of occurrence of any damages.

**Second**: The Islamic Bank is permitted to delegate an agent such as a consultant engineer to receive the completed works from the contractor. The same agent may also deliver all finished works to the Istisna' requestor.

**Third**: The requester of Istisna' has no relation with singing the contractor's invoices.

**Source:**

Shariah board Fatwas of Qatar Islamic Bank, Fatwa No. 33.

**Q (11):**

A factory owner, who is a customer of the bank intends to build an additional warehouse within his factory. He received an offer from a contractor to build the required warehouse as per fixed specifications for say 100.000 pounds, but because he lacks provision of funds immediately, is it allowed for the bank to enter into a contract with the mentioned contractor to build the warehouse in return of the specified price and agreed upon specifications and then sell the warehouse on Murabah, bargaining or on deferred basis to the above factory owner?

**Answer:**

Shariah Board see that bank management may agree with the customer for building the warehouse as per specifications specified by client for fixed amount. Then after entering such agreement, the bank agrees with the contractor to build the warehouse in accordance with the specifications in return of a price to be agreed upon. If the bank opts to sign a separate contract with the client to represent him in supervising the contractor's implementation of contract, then no shariah objection on that provided this has no relation with the bank contract entered with him regarding the warehouse or the bank contract with the contractor.

**Source:**

West Sudan Islamic Bank, Shariah Board Fatwa No. (5).

**Q (12):**

With respect to acceptable Murabaha sales, are the transactions described below permissible from a Shariah point of view?

**First**: The owner of a piece of land, applied to the bank to finance a building on that land. The bank agreed to the deal subject to a term that it receives 25% as profit?

**Second**: Owner of a piece of land, applied to the bank to finance a building on that land. The bank agreed to the deal, provided that it takes 50% profit and the repayment of the facilities advanced will be paid in installments spread over 5 years.

**Answer:**

The deals mentioned above do not come within the category of Murabaha sale. A Murabaha sale is that when the buyer sells the goods for its original price on condition that the second buyer will pay him a given profit. In Murabha sales the capital paid for the goods and profit requested by the first buyer must be clearly specified. In the transactions inquired about, the bank did not buy anything to be sold for a profit, but wants to make a contract with the owner to construct building on his land. This transaction falls within Istisna' contract provided that the bank assumes the responsibility of building from the start up to completion subject to the given specifications of the building, i.e. turnkey contracts.

Istisna' contract is a Shariah accepted contract, but it is not permissible for the bank to make a contract with the owner to make

a profit of 25% of the total cost since there is uncertainty as to the cost. The acceptable practice is for the bank to estimate the cost and add a profit to it, then to make a contract with the owner to build the said house for a given sum as profit for the bank, either to be paid on completion, or part of it to be paid in advance, and the balance on completion, or in installments as agreed to. There is nothing preventing an increase in the price where payment is in installments, and there is also nothing wrong with a difference in price where there is a difference in the time of completion of the job.

**Source**:

Faisal Islamic Bank - Sudan Publications, Rules of the Shariah supervisory Board, Fatwa No. (19).

## 2- Price of Istisna'

## 2-1 Offering manufacturing requester (Mustasna) the option between a lower spot price and a higher deferred price:

### Question:

Certain customers are willing to contract with us to build them housing complexes and towers through Istisna' because they have neither the funds to finance building nor the necessary technical experience. They always request to furnish them with the cost of the project establishment in case the payment is made cash down or otherwise on deferred basis so as to contract based on comparison between our quotation and offers of other establishments which provide the same service. So, is it permissible during negotiation phase and before contracting to tell the project owner that the cost of the project construction shall be less if he pays cash down, however if we paid the project expenses up to completion he pays back within a year term, the project cost shall be so plus an extra sum e.g the cost of a residential building is 300.000 Kuwaiti Dinar including the cost of execution, supervision, management of the project as well as utility provision in case the customer pays on spot "direct disbursement", however in case of deferred payment and as Kuwaiti Finance House assumes project finance the cost shall be 340000 Kuwaiti Dinar for one year term and 380000 Kuwaiti Dinar for 2 years term e.t.c. so shall we inform the customer about such figures during negotiations provided that we reach a fixed price according to which we contract ?

**Answer:**

It is permissible in forward contracts to tell the customer of the various prices according to term during negotiations provided that the transaction shall be based on a specific price of contracting. In consideration of the accuracy of terminology and expressions of contracting, the Shariah board has made some amendments to re-draft the question.

**Source:**

Shariah Fatwas in economic issues book – part (1), (2) and 3 – Kuwait Finance House, Fatwa No. 323.

## 2-2 Expenses made after initial approval

**Question:**

Is it permissible for the bank to pay to the contractor for works achieved by the later after the initial approval of contracting but before the actual signature of the contract?
A client submitted an application to the bank to finance a building under Istisna', the bank approved the application on 09/07. Different procedures such as preparation of time schedules, accounting, and preparation of contracts were delayed, the contract was executed on a later date. As soon as the bank approved the application for Istisna', the contractor started to execute the project before signing the contract with the bank, is it permissible for the bank to repay to the contractor the expenses incurred by it after the initial approval but before the execution of the contract?

**Answer:**

In principle, execution of terms and conditions of the contract start from the date of its signature pursuant to time schedules stated therein, but it is permissible for the bank to waive its rights in that respect and pays the contractor for the works done by it before signature of the contract if the bank sees remarkable benefit in such agreement.

Shariah board opines that a written agreement may be made with the contractor when an initial agreement covering the date of commencement of finance is reached, even if it is prior to contract

signature so as to facilitate determination of bank profits and preparation of time schedules accordingly.

**Source:**

Shariah Board Fatwas of Dubai Islamic Bank, Fatwa No. 69

# 3- The manufactured product

**3-1 Sale of a product under Istisna' contract before its reception:**

**Q1:**

What is the Shariah opinion regarding the sale of unfinished housing apartments but building materials for finishing them are available as well as land on which they will be constructed besides building plans and designs are also available?

**Answer:**

The concept is permissible in principle as the transaction is regarded Istisna' which is a Shariah compatible contract.
However, a detailed study should be made for the clauses of the contract on which parties would agree.

**Source :**

Shariah Fatwas in economic issues book – part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 74.

**3-2 Publications deferred in delivery as a subject matter of Istisna' contract:**

**Question:**

Is it permissible to purchase publications with agreed upon specifications, deferred delivery and advance payment, considering that the advanced price should be reduced in this type of purchases?

**Answer:**

It is permissible to purchase publications according to agreed specifications and delay their delivery for a pre-determined date. However, it is permissible here to make advance payment akin to Salam, as well as it is permissible to defer it as it involves manufacturing which subsume under Istisna' contract where advance payment is not a condition like lease (Ijara) transaction. Also it is permissible to lower the price due to postponement of delivery of products, which is a common practice in these types of sale.

**Source:**

Shariah Fatwas in economic issues book – part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 337.

# 4- Manufacturer (Al Sania) Terms (Financing Party)

## 4-1 To stipulate delegating the bank as an agent for managing manufactured commodity:

**Question:**

Some of the bank customers ask the bank to construct a building for them, with particular specifications, based on Istisna' contract. Guarantees taken by the bank from the customer include mortgage of land along with premises therein, in addition to a condition included in the contract which stipulates that the bank should assume management of the property and to collect rent value to settle the customer's due installments.

This condition states that: Second Party delegates the first party (Dubai Islamic Bank Branch) to totally supervise management, lease and collection of rent value for the whole property and its components for the total rent revenues in lieu of management and deposit the said rent in the Second Party account No. ……………., which the second party agrees not to draw from it. The bank is entitled to deduct value of due installments from that account, provided that this authorization would continue valid and irrevocable up to total settlement of the first party dues ensuing from this contract.

Is it Shariah permissible to state such a condition in Istisna' contract?

**Answer:**

Stipulating that the bank to be an agent in managing and collecting rent value to settle customer installment is permissible and Shariah has no objection, provided that the other party agrees.

**Source:**

Shariah Board Fatwas of Dubai Islamic Bank, Fatwa No. 69.

# 5- Nature of Istisna' Requester's Business

**5-1 Foreign Co-education Schools:**

**Q (1):**

A private foreign school applied for building a school including grades from Kindergarten to secondary along with a hostel, compricing 450 apartments. The school is run on co-education system. Dealing with them in this project will be according to one of the following methods:

First: To build school according to their specifications, and then lease building to them for a long period while the land and the buildings are to remain owned by Kuwait Finance House.

Second: To build the school on Istisna' basis whereby construction costs to be settled by monthly or annual installments while land and buildings are to stay owned by them?

**Answer:**

No objection, from Shariah point of view, to build a co-education school by means Of ownership or lease, however it would be more appropriate not to construct the school to avoid evasive transactions.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (436).

**Q (2):**

What is the Shariah opinion if a foreign entity requested building a school, run on national foreign schools system, for non- Muslims, however Arabic language and Islamic education instruction is under the Ministry of Education supervision?

**Answer:**
It is not permissible to finance a school run on foreign schools system because these schools indulge in misleading Muslim students to the extent that official supervision fails to control, in addition to weak direction by students guardians.

**Source:**

Sharia Fatwas in economical issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (528).

# 6- Istisna' Requester Conditions

**6-1 Stipulation of appointing a consultant from Istisna' Requester part:**

**Question:**

Sometimes the customer agrees with a consultant, in Istisna' contracts with a bank, to supervise construction of the building which the customer requested the bank to sell to him. The consultant is to design and follow-up supervision of the building execution on behalf of the customer, provided that he pays the consultant charges. In certain cases the customer asks the bank to agree with the consultant and pays its charges in return of follow up of execution, is it permissible in such case that the customer agrees with the consultant to be its agent in the follow up of execution in accordance with specifications, in return of bearing its charges?

**Answer:**

Shariah Board studied whether it is permissible for the customer to agree with the consultant to supervise construction of the building which is constructed by the bank for the customer and sell it to him on deferred sale basis.

Since government regulations stipulate the necessity for a consultant to supervise construction and to ensure conformity of drawings, plans and technical specifications and that the consultant is paid a specific charge agreed upon between the two parties for its work as per a signed contract, Shariah Board see no objection for agreement between the customer and the consultant and that the customer bears its charges. The bank may agree with

the consultant and adds its charges to the building costs. However it is preferred that the bank and the customer agree to select the consultant before signature of the contract.

**Source:**

Shariah Board Fatwas of Dubai Islamic Bank, Fatwa No. 69

**6-2 Condition that Istisna' Requester to be himself the Manufacturer (Sania):**

**Question:**

Somebody applied to Dubai Islamic Bank requesting the bank to build an investment apartment building composed of four apartments. Upon agreement of the bank to that request, the land owner, who is also an owner of a contracting company, applied to the bank to undertake by himself the construction of the building in accordance with specifications as per agreed upon amount with the bank. Is it permissible for such person to undertake building by himself in his capacity as a contractor, and after construction completion to re-purchase the building from the bank for a higher deferred price?

**Answer:**

This case involves that Istisna' requester to manufacture by himself what he requested to be made for him, as the case of a land owner who asked the bank to build for him an investment housing building and the bank agreed, is it allowed that such a land owner, who is also a contractor, to build the building for an agreed upon amount, and after construction completion to re-purchase the building from the bank for a higher amount. Shariah Board do not recommend such a transaction, since the land owner, or Istisna' requester can build the building or do the making process and in this case Istisna' contract is irrelevant. The bank may enter into a diminishing Musharka ending into ownership with the land owner. In this case the land owner contributes land and work while the

bank provides funds and as such enters into Musharka each proportionate to his share. The bank may also provide the land owner with all building requirements by the way of Murabaha.

**Source:**

Shariah Board Fatwas of Dubai Islamic Bank, Fatwa No. 40

# 7-changes and addition to terms and conditions of the contract

**7-1 Istisna' applicant requested to make changes that lead to increasing the cost:**

**Q:**

After completion of contracting with both parties each independently, the owner requested us to make some changes on design or specifications which cost us additional amounts of money. He explained that he is ready to pay all additional sums. Is it permissible to undergo some changes in the contractor's contract?

**Answer:**

It is permissible to change some conditions or add some obligations between Kuwait Finance House and the owner, with no effect on KFH and the contractor unless KFH and the contractor later agree in this regard.

**Source:**

Shariah Fatwas in economic issues book – part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 249.

**7-2 Bearing the consequences of the unintentional drop of some clauses given to the contractor:**

**Question:**

If we discovered that there were some clauses we forgot to deliver to the contractor unintentionally, as we handed him specifications and plans for Quotation of prices. In this case who shall bear the cost of adding or applying such clauses on the building?

**Answer:**

Kuwait Finance House shall bear the cost resulting from this unintentional omission in the contract. The owner shall not bear the costs unless he accepts so. However if the plan submitted by the contractor did not include such clauses, in this case the owner is held responsible.

**Source:**

Shariah Fatwas in economic issues book – part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 250.

## 8- Transfer of Istisna' contract:

**8-1 Transfer of Istisna' contract to a third party:**

**Question:**

Is it permissible to execute a sale contract with a governmental department after the tender is awarded, considering that the required commodity is not yet possessed, but there is a promise to purchase from the exporter or producer to import, possess and hand the commodity over?

**Answer:**

It is not permissible to execute a sale contract for goods owned by the seller at contracting time which were not manufactured, unless in case of Salam (which is a sale of products under liability with instant payment of all price). However it is permissible to sell the manufactured product even if it is not possessed by the seller. The same applies if the product is manufactured by the seller or otherwise, for example if it is purchased ready manufactured then sold it to the one who contracted with him before, provided it was based on specifications. This transaction is a case of Istisna'. In case the goods are not manufactured they may be purchased from the producer or exporter with the condition of option (The right to rescind within a particular due date). When the bid is awarded to the seller, his right to option is dropped (then the goods become under his possession) and signs the sale contract with the entity with which he is dealing.

**Source:**

Shariah Fatwas in economic issues book– part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 348.

# 9- Contingent conditions

## 9-1 Addition of government stipulated conditions after signing a contract

**Question:**

In case a government authority stipulated adding a new provision to its general provisions for construction of buildings, after a contract with a contractor (subcontractor) was signed, who will bear the additional costs, me or the owner?

**Answer:**

An article may be added to contracting agreements stating that in case of any new regulations enacted by an official authority, which are not included in the original contract and involve financial commitments, such additional costs should be borne by the owner.

**Source:**

Shariah Fatwas in economic issues Book, Part (1), (2) and (3), Kuwait Finance House, Fatwa no (251).

# Second: Contracting

# 1-General Provisions of Contracting Agreements

## 1-1General Provisions of Contracting Agreements:

**Question:**

Please advice Shariah opinion on the following:
The bank provides necessary funds for implementing a project awarded to one of its customers. The customer from its side provides all necessary requirements for implementing the project. The bank management would like to know Shariah Board opinion on fixing partnership (Musharaka) shares for each of the customer and the bank, and also distribution of profits of the transaction?

**Answer:**

There is no objection for executing the contract as above stated and profits of the transaction should be distributed as follows:

First: The bank and the customer should agree upon a specific share of profits for the customer (a fixed rate of the total profits) in consideration of implementing the works required for the transaction as per contract.

Second: The bank receives the remaining profit and in case of loss the bank bears the loss totally.

**Source:**

Faisal Egyptian Islamic Bank, Shariah Board, Fatwa Book, Fatwa no (1).

**Question:**

Please advice Shariah opinion on the following:
The bank establishes a hospital, a factory or a workshop or any facility by providing funds, and then entrusts specialized professionals or technicians to assume management and operation of the project. The bank management would like to know Shariah Board opinion on mechanisms of profits distribution between the bank and customers?

**Answer:**

There is no objection for the bank to enter into agreement with professionals and technicians as above stated, and profits distribution would be as follows:

First: The bank and the customer agree upon a share of profits (fixed rate of total profits) for professionals or craftsmen who undertake management and operation.

Second: The bank receives the remaining profits and in case of loss the bank bears the loss totally.

**Source:**

Faisal Egyptian Islamic Bank, Shariah Board, Fatwa Book, Fatwa no (3).

## 2- Subcontracting

## 2-1 Legitimacy of subcontracting

**Question:**

In case a company owns certain equipment and it contracts with Kuwait Finance House for erection of such equipment against an agreed upon amount and on the other side Kuwait Finance House would contract with a contractor for erecting such equipment. Is this transaction Shariah compatible?

**Answer:**

This transaction is Shairah compatible, since there is distinct separation of the two contracts as above stated.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa no (267).

**2-2 discounts acquired by the bank from the subcontractor**

**Question:**

In certain cases we are required to implement specific works for customers, and in our turn we fetch offers from subcontractors to execute such transactions, and we specify our quotations in light of these offers. Is it allowed after we bid to project owners, that we negotiate with subcontractors to make us discounts without affecting the owner price?

**Answer:**

If the two transactions are independent i.e. no relation between the agreement with the owner and that with the subcontractor, in this case any discount in contractor's price is totally entitled to Kuwait Finance House. However if the transaction is Murabaha, any benefit gained by Kuwait Finance House would be gained by subcontractor on same rate.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa no (289).

## 2-3 Discounts received by Main Contractor from a subcontractor:

**Question:**

A project was awarded to a contractor for a total amount. This contractor would perform some works while subcontractors would perform other parts of the project. As such subcontractors came to know that their entitlements would be paid by Kuwait Finance House and hence settlement of their dues is guaranteed at completion of works, they reduced their offered prices by 10%. Is this discount an acquired right for Kuwait Finance House, which is the initiator for such action, or is it a right of the main contractor, who is committed before Kuwait Finance House to complete works?

**Answer:** The relation in this respect is between Kuwait Finance House and the Main contractor, with whom the house signed the main contract. However works which the main contractor entrusts subcontractors to perform, Kuwait Finance House is not a party to such works. Consequently discounts made by subcontractors are considered as a right entitled to the main contractor who is contracting with them. As such Kuwait Finance House has no right to take any share.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa no (292).

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# 3- Change of the contract price

### 3-1 Change of the contract price due to additions in the required work:

**Question:**

We effected Murabaha Transaction with a customer which involves installation of aluminum pursuant to a contract signed between us and a contractor. As the contractor is carrying out works, some new additions not stipulated in the original contract emerged, the customer whom we dealt with instructed the contractor to execute the additions and the customer shall inform Kuwait Finance House accordingly, considering that all additions were carried out in accordance with specifications and previous conditions which will result into difference of price between previous works and new additions. In consideration that the customer has informed us about the additions after completion, is it permissible for Kuwait Finance House to pay the value of additional works to the contractor, and reimburse them from the customer considering that we already finalized the deal with the customer?

**Answer:**

If the contract signed between Kuwait Finance House and the contractor stipulates that if there is a necessity that the price should be as stipulated in the contract, the Kuwait Finance House should pay to the contractor the cost of the new works and requests the customer to pay it. However if it is not so stated in the contract, and the interest of work requires so, recourse shall be made to

prevailing customs and traditions to determine that case and the customer pays the extra sum and in accordance with the profit agreed in the contract signed between the Kuwait Finance House and the customer.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 434.

**3-2 The conditional change in case works are not completed:**

**Question:**

We received an offer from a central air conditioning system company. A paragraph states the following "payment terms ":

First: 50% to be paid at execution of the contract
Second: 25% to be paid at installation of air ducts.
Third: 20% to b paid when machinery is delivered to the site.
Fourth: 5% to be paid at operation or after six months from the delivery date of the machinery to the site. If we could not complete our works due to circumstances related to the site for a year from the contract execution we shall be entitled to request change of the contract value to cope with the successive price hikes and payment of full contract value. The guarantees remain valid and other terms of contract remain unchanged.

The Question is:
First: Is it permissible for the air conditioning company to raise the contract value after its execution and completion of sale?
Second: If it is permissible, is it allowed for Kuwait Finance House to request the purchaser "the one whom Kuwait Finance House sold the commodity" to re-pay the excess amount?

**Answer:**

It is not permissible to change the contract unilaterally after its execution and fixing of price. On the contrary agreement is

indispensable. However, this may be settled by including a penalty clause for the benefit of the Air conditioning company since it is not blamed for the delay of execution, but it is attributed to the contractor for whose default the Kuwaiti Finance House is responsible (and accountable for it as per the agreement). So it is permissible to insert this clause for the benefit of the air conditioning company. Hence, this clause should be embodied in the agreement for the benefit of the air conditioning company which provides for the agreed compensation; however it shall not exceed the actual damage.

If Kuwait Finance house paid the penalty compensation to the air conditioning Company it may transfer the said compensation to the construction contractor who is responsible for this delay. Kuwait Finance house may also make a claim against the purchaser under Murabaha demanding the later to pay the difference as it agreed on Murabaha on cost basis but it shall deduct the part of compensation paid by the contractor because the contract conditions stipulate that Murabaha is based on actual cost, so if it received penalty compensation from the contractor the cost shall be reduced.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3) – Kuwait Finance House, Fatwa No. 73.

## 4- Transfer of the contracting agreement:

## 4-1 The bank substitutes the customer before the contractor:

**Question:**

A land owner has submitted the following offer to us: He has a land which he purchased by credit from Kuwaiti Finance House and is still under the name of Kuwait Finance House (on mortgage). He contracted with a contracting company to build a tower on the said land against a cost of 800.000 Kuwaiti Dinar, but he did not pay any sum to the contractor and the contractor started to carry out some excavation and concrete works.

The owner requests us to replace him by financing the building and supervising the contractor to execute the building pursuant to pre-determined specifications on the condition that we fix a lump sum for this transaction. He intends to pay 25% out of this money upon contracting and the remaining amount shall be paid in installments. What is the Shariah opinion with regard to this matter?

**Answer:**

With regard to entering into an operation with an owner who failed to continue its contract with a previous contractor, it shall be conducted as follow:
First: Terminate the transaction with the first contractor as per status quo. The obligation to pay shall be restricted to the owner, and Kuwait Finance House has nothing to do with what has been done by the first contractor in the already executed phase.
Second: A new contract to execute the remaining part of the project should be signed with the owner provided that Kuwait Finance

House is not obliged to deal with the same contractor, however it is committed to achieve works through any means, then Kuwaiti finance House is entitled to reach an agreement with the same contractor or any other contractor. Each agreement is completely independent. The committee recommends that all necessary measures be taken to safeguard rights of Kuwait Finance House by verifying solvency of the owner and its ability to pay on due date, and provision of sufficient collateral to guarantee rights of Kuwaiti Finance House.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3) Kuwait Finance House, Fatwa No.252.

**4-2 The bank replaces a contractor in a partially executed contracting:**

**Question:**

How can Kuwait Finance House enters into a construction contract previously started by another party, and can a contract be made for the remaining period?

**Answer:**

For the Kuwaiti Finance House to enter into an operation which the previous contractor failed to complete, the whole operation should be liquidated and the rest of contracting between the customer and the contactor to be terminated. Then a construction contract should be made for the remaining works, and the Kuwait Finance House is not responsible for any debts due to the previous contractor. The debts are considered the liability and responsibility of the customer.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 440.

# 5- Bidding to carry out projects

## 5-1 Entry of the bank's real estate administration beside others into a tender offered by the bank for bidding:

### Question:

Is it permissible for the real estate projects administration to invite offers from contracting companies to execute a particular project, and the administration in turn submits its offer to execute the same project, then the administration becomes the successful bidder because execution cost is lower than offers submitted by other companies considering that some companies know that real estate projects administration offers quotation for the project beside their offers and hence tenders are opened, putting into consideration that the administration submits its offer without knowing details of other companies offers?

### Answer:

It is permissible for the real estate projects administration to invite offers from contracting companies to execute a particular project while submitting its offer for the execution of the same project. It is permissible to award the project for the same administration if the execution cost is lower than offers submitted by other companies considering the interest of Kuwaiti Finance house.

### Source:

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 441.

# 6- An entity requesting construction of building

## 6-1 Request of usury-based banks to construct institutions of their own:

### Question:

Is it permissible for a Muslim who has a contracting office to construct a building at the request of a conventional usury-based bank. The usury-based bank requests this person to construct a housing unit for an agreed sum. Is it permissible for this person to construct the building for the said bank considering that he did neither borrow nor lend interest-based loan from the bank?

### Answer:

It is permissible for him to build a housing unit for the bank if he did not deal with the bank in an interest-based manner, as it is reported that the prophet had dealt with the Jewish, though Jewish deal extravagantly in usury, but the prophet dealt with them in a safe and proper non-usury manner. Hence, it is permissible to deal with the usury-based bank in building investment real estates if the whole transaction did not involve usury.

### Source:

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 254.

# 7- The contractor's remuneration

**7-1 Payment of the contractor's remuneration in full, then let the beneficiary pays it in installments and add a specific rate:**

**Question:**

Is it permissible for the Kuwait Finance House to agree with a contractor to execute a particular operation in a project owned by a specific company, and the Kuwaiti Finance House pays the contractor's remuneration fully in advance. On the other hand the company which is the project owner agrees with Kuwait Finance House to pay the latter the contractor's remuneration which is paid already by KFH, in addition to a determined percentage?

**Answer:**

This transaction is not permissible as this determined percentage is paid for the term and is considered as compensation for financing, so it is Riba (usury). However, if Kuwait Finance House undertook to work for the company according to an independent agreement, then handed the work over to a contractor for a lower pay according to an independent agreement also, then it is permissible and the contract with the company may not be influenced by any change in prices or responsibilities born by Kuwait Finance House as a result of its agreement with the contractor.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 269.

**7-2 Grant the customer the option to pay cash or on deferred basis:**

**Question:**

An agreement is underway between us and the General Corporation of Housing to build housing units for citizens provided that some changes and additions to be executed on the Standard Government housing unit. The resulting cost should be paid by the citizen in an independent agreement to be signed between us and him. The payment is either cash or on credit. A table containing items to be changed shall be drawn with the expenses of each item if its cost is paid in cash by the citizen. After determining the total cost of items, the credit price is calculated so that the price of both cash and credit is clear, so is this practice permissible from Shariah point of view?

**Answer:**

It is permissible to make some changes or additions on the subject matter of the contract whether the price is spot or deferred price provided that price of change or addition should be set before implementing the change or addition such that price is clearly defined whether spot or deferred. This later agreement is considered a partial cancellation of the change or addition pursuant to the previous contract. Also deferred price should be calculated upon the agreement to make change or addition but not after execution or start of change or addition.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No. 438.

# 8- Penalty of delay

**8-1 The bank's right to obtain delay penalty:**

**Question:**

Real estate projects administration has entered down, in its books, 250.000 Dinar against contractors as penalty for delay because they delayed the execution and delivery of contracted projects on their due dates, should Kuwait Finance House be entitled to all these penalties whether less or more than the actual amounts?

**Answer:**

With regard to amounts withheld from contractors in observance of delay penalty clause, it should be considered whether it is equal to the actual damage or less than it, then in such case it is the right of Kuwait Finance house, but if it is more than the actual damage, the difference should be refunded to the said contractors. The decision in this respect is up to the discretion of concerned experts.

**Source:**

Shariah Fatwas in economic Issues book– part (1), (2) and (3) – Kuwait Finance House, Fatwa No300.

**8-2 Penalty should be proportionate to actual damage:**

**Question:**

First: A real estate management contract presented by the real estate maintenance and management department was submitted, then reviewed and approved.

Second: In case no tangible actual damage exists like if a contractor is responsible for constructing a branch of Kuwait Finance house has delayed handing over the branch and we do not have a rented branch in this area so that we can charge the actual damage as the rent which we paid to the rented branch. In some cases it happens that after we receive the branch, we find that the branch administration is unwilling to open it within a specific period, and hence postpone the opening of the branch for a longer duration, what is the delay penalty should we apply to the contractor?

Third: In case awarding of the project is divided over a number of contractors, and a contractor delayed after his contractual due date, but his delay did not cause the delay of the project, i.e. his delay did not result into actual damage, so what delay penalty should we apply against that contractor, considering that not applying penalty against contractors will cause us some perplexity, and makes contractors neglect execution of their assigned duties which in turn leads to loss of invisible rights of Kuwait Finance House?

**Answer:**

We have to consider that the compensation for delay penalty should not exceed the actual damage as penalty clause and compensation are determined upon contracting. So the conditional compensation should be proportionate to expected damage as per

the common practice and tradition and should not be exaggerated. In case of violation and consequent application of penalty clause which results into compensation, the recompensed party should receive the amount stated in the contract even if the actual damage is less.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3), Kuwait Finance House, Fatwa No 437.

# 9- Contingent Conditions and their impact on contracting agreements

**9-1 Government addition of extra conditions after contract signature:**

**Question:**

In case the government added to its general building conditions any new condition after signature of contract with the (subcontractor) contractor, who will incur such extra expenses me or the owner?

**Answer:**

It is permissible to add to contracts a provision that any new condition to be added by concerned entities, which has not been included in the contract, and entails financial charges, should be borne by the owner.

**Source:**

Shariah Fatwas in economic issues Book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (251).

# 10- Participation in establishing a real estate Project

### 10-1 Bank entering into a real estate project as a partner participating by land and as project manager

**Question:**

What is Shariah opinion on the possibility of offering an investment real estate project to the public before commencing building. The land is ready as well as plans and designs, the final value of the project capital is specified, and the public may look into the details of the project. The public offer shall be as follows:

First: Investors cover the project capitals.

Second: A feasibility study is ready for the project starting:
A. Project costs,
B. Implementation start,
C. Implementation end,
D. Anticipated book value and rate of return,
E. Planned period for renting the project.

Amounts raised for covering capital may increase or decrease of the actual cost?

**Answer:**

No Shariah objection for offering an investment real estate project on partnership basis. Kuwait Finance House would enter as a partner and manager. In case of increase of amounts offered from partners over the real costs, the difference would be returned to partners, and this would be considered as capital decrease.

In case of decrease, partners would be required to pay the difference proportionate to their participations.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (439).

# 11- Real Estate Finance

## 11-1 Real estate finance for building and purchasing houses:

**Q (1):**

After duly reviewing researches received by Figh Academy regarding the subject of (real estate finance for building and purchasing houses) and deliberations on that matter,

Answer:
It is decided that:
First: House is a basic human need. This need should be fulfilled through legitimate means by lawful (Halal) money. The methods applied by real estate and housing banks and such similar entities by lending on interest basis is considered as usury dealing and non-compatible with Shariah, whether with small or large interest rate.

Second: There are Shariah accepted modes which could be followed for provision of houses (or their renting) instead of impermissible modes, including:
A. The state may lend interested persons loans dedicated for constructing housing units to be collected back by reasonable installments free of interest, neither in express terms nor under the name of service charges. In case of need for raising expenses to cover and follow-up loan transactions, costs should be limited to real loan charges as stated in para (A) of the Figh Academy third session resolution No. (1).

B. States capable of building houses may sell them to those interested on credit or installments in accordance with Shariah controls stated in the resolution enacted in this session.

C. The investor, whether individual or companies, can undertake the construction of houses which can be sold on deferred payment basis.

D. Houses may be owned on Istisna' contracts basis, being considered as a necessity, in such a way that houses to be purchased before building as per the accurate description, avoiding ignorance and ambiguity leading to dispute, without necessity for spot payment of the whole amount. It may be deferred on installments to be agreed upon, provided conditions and terms of Istisna' contracts, approved by jurist and distinctly identified from Salam contract, be duly observed.

It is recommended that the matter to be further reconsidered in order to find new Shariah approved modes which enable provision of housing units to those interested.

**Source:**

Organization of Islamic Conference, Islamic Figh Academy, resolutions and recommendations of the council of Islamic Figh Academy, 1st Session to eighth Session, Resolution No. (    ), Sixth Session.

**Q (2):**

Shariah opinion is sought regarding a case of the bank contracting with one of its clients to build a house or a store on a land owned by the client on cost plus specified profit basis to be negotiated with this client. On the other hand, the construction would be implemented by a contractor or a company to be agreed upon by the bank, while the bank would add a specific profit over the price to be received by the contractor?

**Answer:**

Shariah opinion in this respect is that calculation of cost plus profit is permissible if the bank purchases construction materials and sells them on Murabaha basis. As regards to this case as presented, it should not be Murabaha, however it could be Istisna'. The bank agrees with the client on final price without mentioning costs or profits. Then the bank enters into separate agreement with a contractor to perform construction.

**Source:**

Source: Shariah board Fatwas of Qatar Islamic Bank – Fatwa No. (33).

**Q (3):**

Bahrain Islamic Bank requested participation in Arab Gulf University Project. Operations Manager presented a summary of the project offered by Bahrain Islamic Bank regarding Gulf

University. Total cost of the project is 150 million US Dollars. They are in need of 50 million US Dollars.

Bahrain Islamic Bank offered to Qatar Islamic Bank and other Islamic Banks to participate in the project to the extent that the university would not be compelled to seek finance from usurious banks.

Bahrain Islamic Bank proposed following steps to implement the project:

First: The Bank would purchase part of the university buildings equivalent to the remaining amount of the project capital i.e. fifty million US Dollars, which is one third of the amount.

Second: The two parties would then estimate the building rent value. The university in its turn would rent the building and the rent value to be divided between parties each proportionate to its share.

Third: The bank obliges to sell its share to the university by the same nominal value with which it purchased, over a period of three years.

**Answer:**

Concerned Islamic Banks may finance the transaction according to following Shariah accepted conditions:

First: Government of Bahrain should grant Islamic banks the right of usufruct of the land to the extent that these banks to have the

right to dispose of building which they purchase by sale, lease or grant and other modes of permitted disposal,

Second: To purchase part of the university buildings with the value of ( ) million US Dollars,

Third: To lease buildings to the university.

Fourth: To enter with the university into a company which end ultimately into ownership. The sale with be at market value jointly agreed by the two parties at sale and not on nominal value, except if the nominal value is equal to the market value at the time of sale.

**Source:**

Shariah board Fatwas of Qatar Islamic Bank – Fatwa No. (74).

## 11-2 Finance jointly with a usurious financer:

**Question:**

What are the Shariah controls governing entry into partnership (Musharaka) with a party, who is a loan borrower with interest, in a real estate ownership?

**Answer:**

The proposed mode for such a cooperation may be supported by Shariah controls to be applied as follows:

Dallah Real Estate to enter into Musharaka contract with another party, which is not an affiliate of Dallah, in order not to be responsible for his borrowing with interest, if it happened.

Accordingly there will be Musharaka with capital to be used for purchasing real estate and its proceeds to be distributed proportionate to ownership shares. In this manner the other party if it borrows with interest, it will borrow on its own responsibility. Al Baraka should not grant this party any guarantee on proceeds or on real estate principal. Dallah may provide its partner with an external chance totally separate from the borrowing subject i.e. Dallah to issue an obligatory offer on itself to purchase the share of the borrower, within a specific period, (Gradual diminishing Musharaka). Provided that this offer obligates Dallah alone until the other party accepts the offer within such period or at its end. As such the sale will be for the part which is subject of the offer.

The other party has the right to exercise this option throughout the specified period of the offer.

However parties may reach an understanding not to use the offer until the last moment before its expiry.

In summary:
This mode of cooperation is limited as follows:

First: Dallah should not enter into a borrowing transaction whether as a borrower or guarantor of a usurious loan.

Second: No undertaking to be entered for attachment of proceeds for resettlement of the usurious loan.

Third: No mortgage on the joint real estate for the benefit of the usurious loan whether on all the real estate or the other party share, because the real estate is commonly owned, so the mortgage would also be common including part of Dallah share. This transaction needs Shariah follow-up and supervision to ensure its implementation properly in due time.

**Source:**

Shariah Replies in banking applications Book, Part one, Department of Development & Research, Dallah Al Baraka Group, Fatwa No. (23).

## 11-3 Real Estate Investment Portfolios:

**Q (1):**

In case of withdrawal of one of the partners of a real estate portfolio by selling its share before the date of revenues distribution, is it permissible to sell its share with all its rights and receivables including the portfolio returns from aggregate rents?

**Answer:**

No Shariah objection on sale of the share of one of the partners its share in a real estate portfolio before distribution of returns provided that the new purchaser would be assigned all his rights and obligations therein.

**Source:**

Shariah Fatwas in economi issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (507).

**Q (2):**

Regarding merging real estate portfolios No. 1,2 and 3 and the mode to be presented to participants.
Question and mode attached?

**Answer:**

It is Shariah permitted to merge real estate portfolios No. (1), (2) and (3), provided that level of the lower portfolio to be raised and

then to be merged with others. Conditions of the transaction should be presented to Shariah and Fatwa Board for consideration.

**Source:**

Shariah Fatwas in economic issues book, Part (1), (2) and (3), Kuwait Finance House, Fatwa No. (525).

# 3- Salam Contract

# I- General provisions of Salam contract

## 1-1 General provisions of Salam contract

**Q1:**

Is it permissible to purchase a commodity on deferred delivery but which is fully described while payment is on the spot?

**Answer:**

If the time of delivery is fixed and payment of all price is on spot, then this transaction is considered as a permissible Salam sale.

**Source:**

Resolutions and Recommendations of Al-Baraka Symposia on Islamic Economy, Department of Research & Development – Dallah Al-Baraka, Al-Baraka Sixth Symposium For Islamic Economy- Fatwa No.21

**Q2:**

Why did the author of Al-Mi'ar differentiate between commodities and other liabilities if Dirhams no longer exist for any reason what so ever, is there any difference between borrowing (Salaf) and sale contracts or marriage contracts (or lease "Ijara" contracts)?

**Answer:**

Muslim jurists differed over this issue. Differentiation between borrowing and other obligations may be due to precautions against usury (Riba), because borrowing may probably lead to usury. This stand is made as a kind of devoutness. This inquiry may be forwarded to the fifth session of Islamic Figh Academy to be held in Kuwait.

**Source:**

Shariah Fatwas in economic issues book, part (1), (2) and (3) – Kuwait Finance House, Fatwa No 512.

**Q3:**

Some of the bank's clients in El Gadarif, the agricultural region of Sudan, who are crop merchants contacted the bank to deal with them as a partner in dealings in Salam sale and purchase transactions of crops before harvest i.e. to agree on specified binding price, on condition that the crop is delivered at harvest time. Shariah opinion on this matter is required?

**Answer:**

Salam sale is permissible according to the Quran and the Sunna. It is a kind of sale where delivery of the sold item which is called *Muslam Fih* is deferred, while the price is paid in advance which is called *ra's-ul-mal*. It is the reverse of a sale with deferred payment, which jurists defined as a sale of prompt payment for a deferred receipt. This kind of sale is known by Sudanese farmers as "Shail". Salam contract contains the same conditions of sale contract, but has its own special characteristics, which are the following:

1. The price for the goods to be delivered later must be received by the seller at the place of concluding the contract. If the two parties to the contract left the place where the contract was made before receipt of the price, then the Salam contract is void. This is the opinion of the majority of the jurists. The Maliki School allows postponement of the payment for three days only. The Shariah board is of the opinion that the bank may follow the Maliki School if the need arises for postponement.
2. Delivery of the goods sold must be postponed for a definite fixed time. Immediate receipt of the goods in Salam sale is

not allowed by the majority of jurists because of the saying of the Messenger of Allah PBUH, narrated by Ibn Abbas : " Whoever enters into a contract of Salam must effect the Salam according to specified measure, specified weight and specified date of delivery". The Shafie School is of the opinion that the Salam goods can be delivered immediately or at a later date. The Shariah board agrees with the opinion held by the majority of the jurists because it is supported by the strongest proof. Also the shariah board agrees with the opinion of the Maliki School in recognizing the possibility of postponing receipt up to the time when the crop is harvested.

3. The goods to be delivered must be of a type that is commonly available at the later time fixed for delivery. This is a condition that finds consensus, since the goods to be delivered later on must be available for delivery at the specified time, otherwise the prohibited Gharar (uncertainty) would arise. So it is prohibited to contract Salam sale for dates at a time when dates are known not to be available for delivery, or where dates are very rare at the time. A salam sale of dates must not be tied to dates from specific palm tree or specific orchard of date-palms. At the time when the prophet, PBUH, came to Madinah, the inhabitants of Madinah used to make Salam sales of fruitage of specific date, palms, but the prophet, PBUH, forbade that practice. It is told that the prophet, P.B.U.H., received some money from a Jew for fruitage of dates, and the Jew asked for the dates to be from the garden of a named family. The prophet PBUH said: "If it is the garden of X family then No. But a

given measure for a given date" that is because no guarantee can be provided against perishability of dates of that particular garden.

The majority of the jurists do not stipulate the condition of the actual presence of the goods subject of the Salam sale at the time of the contract or after it, before the time specified for delivery. It does not matter if goods are not available at the time of the contract or if they are out of the stock for a given period between the time of the contracting and the time of delivery. The Hanafi School differs, since they make it a condition that goods subject to Salam sale must be available on the market from the time of contracting up to the time specified for future delivery. The Shariah committee has chosen to follow the ruling of the majority of jurists.
There is no difference of opinion amongst the jurists that the Salam is permissible in the case of measurable and weighed objects, on condition that the kind, description and quality is specified as well as the place of delivery. If these conditions are met, the bank can without any hesitation deal in purchasing crops before harvest on Salam sale conditions.
The bank can make deals alone or as a partner.

**Source:**

Faisal Islamic Bank's Sudan Publications, Rules of the Shariah Supervisory board, Fatwa No. 17.

**Q4:**

The bank purchases a specific commodity to be delivered later and pays its price on the spot or sells a commodity to be delivered later and receives its price on the spot, is this transaction permissible?

**Answer:**

The conference has discussed the question of Salam on the light of the terms and conditions set by Muslim Jurists (Fugha) as a deferred sale of a commodity for an advanced price fully paid on spot i.e. it is a sale in which price is determined and actually paid in advance at contracting and the delivery of the sold item is postponed for a date in the future. Also the place of delivery, expenses, descriptions and specifications of the sold item in addition to other conditions are also determined. The conference recommends that all rules & conditions governing Salam sale as determined by shariah shall be strictly followed particularly in dealing with Salam contracts.

**Source:**

Resolutions and Recommendations of the first Islamic bank conference, Fatwa No. 6.

## 2- The price of Salam (*Ras-Mal Al-Salam*):

### 2-1 Considering the previous loan as a purchase price of Salam:

**Question:**

Is it permissible to consider a previous loan as a price for Salam?

**Answer:**

Delivery of price at contracting is considered a condition of Salam contract. It is not permissible to delay delivery of the price till later date. Since the benevolent loan (Qard Hassan) is already advanced to the debtor, it is permissible to enter into a Salam transaction and the Salam purchaser agrees with the Salam seller that the **received loan** amount be Salam price based on the argument that item on liability is akin to the item possessed and under control except in case of the company. Previous actual possession replaces the currently required possession, because they are both considered as possession of guarantee (Qabd Al-Dahman) as loan is guaranteed and the price is also guaranteed in the liability of Salam seller, so it is referred to in the agreement executed between the two parties that Salam price is received at contracting and the date of the Salam contract commencement is the date of the contract and not the date of delivering the previous loan amount which precedes the contract.

**Source:**

Shariah replies in banking applications book, part 1, Department of Research and development–Dallah Al-Baraka Group–Fatwa No. 14.

## 3- The purchased commodity *(Muslam Fih)*

**3-1 The price of the purchased commodity *(Muslam Fih)***
**Q1:**

Is it permissible to determine the price of the commodity *(Muslam Fih)* in Salam sa*le* according to rates prevailing at a particular market (or for instance, at a market price less 10%), pursuant to the market rate at date of delivery? Or is it imperative to entirely fix the price right in the beginning?

**Answer:**

First: The basic principle, in all Salam sales, is that price between the contracting parties should be agreed upon and fixed when they enter into an agreement.
Second: It is likewise permissible to agree on fixing the price according to rates of a particular market in a Salam sale at the time of agreement.
Third: It is also permissible to agree on fixing the price according to rates prevalent in a particular market, by adding a specific increment or making a specified deductions.
Fourth: It is not permissible to agree on determining the price according to future rates of a market.

**Source:**

Resolutions and Recommendations of Al-Baraka Symposia on Islamic Economy, Department of Research & Development, Dallah Al-Baraka Group – Al-Baraka 2nd Symposium – Fatwa No.1

**Q2:**

A client who has some crops which blossomed and about to be harvested, likes to sell the produce on 01 November 1985 at the prevailing rates of El-Gadarif bourse on the same day, is the uncertainty and ambiguity of the contract removed by fixing the date and determining the price according to rates of the said market bourse i.e. El-Gadarif? Considering that the sale is a Salam sale and noting that the two parties have agreed on the specifications of the crops?

**Answer:**

Salam is a sale contract whereby the price is advanced and the sold item which is described in liability is delivered later. The price of Salam sale should be delivered at contracting place "Majlis". This type of contract is invalidated if price is not determined and advanced. Thus:

First: If goods are available in the market with the same required specifications, the seller shall fulfill its obligations even if the price is higher than the agreed price of sale, because as soon as Salam sale contract is signed, the sold item becomes a right of the purchaser and a liability of the seller.

Second: If the bank is contented that the purchased crops are absolutely non-existing, the bank has the right to terminate the seller's agreement and cancel the contract and the seller shall, in this case, refund the amount paid by the purchaser "the bank" without any increase or recompense.

Third: The bank may postpone the delivery of the commodity (the corps), which is the subject matter of the contract, from the

seller for another year if it is contented by the collateral submitted by the seller. Any how, the bank's administration pursuant to data available should take the suitable decision to protect the bank's interests. We strictly affirm that the bank shall not get recompense for the seller's default to deliver the sold item as this condition is essential in Salam sale.

**Source:**

Fatwas of the Shariah Board of the Islamic West Sudan Bank, Fatwa No.4

**3-2 The sale of a commodity** *(Muslam Fih)* **in a Salam sale before taking possession of it:**

**Q1:**

Is it permissible to sell a commodity *(Muslam Fih)* before taking actual possession of it? If it is not permissible, then, is it allowed for the purchaser ( Rabu Salam) to sell against advance payment (in a Salam sale) relying on what he will receive in the future and without connecting in contract between what he sells (against advance payment) and what he will receive later? Is it permissible for the purchaser (Rabu Salam) to involve this process as a matter of business?

**Answer:**

First: The sale of goods without actual possession is not permissible.
Second: In a Salam sale, the purchaser may, however, sell a commodity of the same kind sold to him without linking what is sold in one agreement to what he undertakes under another agreement.
Third: It is not lawful to use this (permissibility referred to above in the second paragraph) for business, because the Salam sale is allowed as an exception to meet the needs of the producers a matter which justifies a Salam sale in individual cases, but not using it for business purposes.
If economic situation in some Islamic countries and public interest demands that in some special situations it should be used for business purposes in order to remove some real injustice, then it would be lawful to do so in the interests of

public welfare, a matter to be appraised by the bodies entrusted with Islamic legal judgment and supervision.

**Source:**

Resolutions and Recommendations of Al-Baraka Symposia on Islamic Economy- Department of Research & Development, Dallah Al-Baraka Group – Al-Baraka 2nd Symposium – Fatwa No.2

**Q2:**

If a client for instance purchased 100 tons of cereals in Salam transaction in January 1985 for a pre-determined price, to be delivered to him in May 1985, and in March 1985 another person offered to join him as a partner for half of what he had agreed upon, then is it permissible for him to take on this other person as a partner in what he had already contracted for regardless of whether his payment is the same, greater or less than the price of Salam?

**Answer:**

This case falls under the non-permissibility of selling goods purchased in a Salam transaction before actually taking their possession, as described in the first paragraph (A) of the previous Fatwa.

**Source:**

Resolutions and Recommendations of Al-Baraka Symposia on Islamic Economy- Department of Research & Development, Dallah Al-Baraka Group – Al-Baraka 2nd Symposium – Fatwa No.3

**Q3:**

Is it permissible to sell the purchased commodity (Muslam Fih) in a Salam transaction to another party who substitutes me before I receive the commodity, and hence the commodity is delivered to him instead of me, then the sale may be repeated in the same manner?

**Answer:**

The sale of the purchased commodity (Muslam Fih) before actual reception (Possession) is unanimously prohibited as stated in the book of "Al-Mughni" written by Ibn Ghudammah which is a reference book by all scholars because it is a well authenticated and perfect reference.

Source:

Shariah Fatwas in economic issues book, part (1), (2) and (3) – Kuwait Finance House, Fatwa No 19.

**Q4:**

A person paid sum of money to another in exchange of quintal of cotton to be delivered on October for instance, is it permissible for the buyer (Rabb-us-Salam) to receive on the due date the price of quintal according to the prevalent price, considering that the seller (Muslam Ilih) has the cotton which is also available to others and able to deliver it. If he paid him the price in this case, is this transaction usurious or not?

**Answer:**

Having reviewed this question we resolve the following:
It is not permissible to dispose of the purchased commodity (Muslam Fih) even to the seller himself before possessing it. The buyer (Rebb-us-Salam) is only entitled to the purchased commodity (Muslam Fih) and this is if the Salam transaction is appropriate. However if Salam is void he shall only regain his price.

**Source:**

Islamic Fatwas of economics – Al-Ahram Al-Iqtissadi – Fatwa No. 81.

# 4- Parallel Salam

## 4-19 Parallel Salam :

**Q:**

Shariah opinion is sought in the case the company purchases commodities (petrol, metals or otherwise) on Salam basis by paying their price on spot and receiving the commodity later, considering that the company may sell the said commodities on Salam by receiving the price of commodities at selling and delivering the commodities on a future date?

Having reviewed the question, the Shariah board resolved the following:

The resolution:

The major feature of Salam contract is that it is a contract on some thing described on liability (fungible goods) whether it is measured, weighed, cultivated and of standard nature. This applies to agricultural products like cereals, oils, and dairies as well as industrial products like iron, cement, vehicles, and planes in addition to raw material products or semi manufactured goods like petrol, and kilinker. The buyer (Musalam) may between the date of Salam contract and the date of actual reception of the commodity (Muslam Fih) to act as a seller (Muslam Iliah) in a similar commodity pursuant to terms and conditions equivalent to those of Salam contract which he concluded or in accordance with amended conditions. Based on this feature Salam contract is regarded as a highly effective instrument to meet the requirements of the Islamic banking system putting into consideration that provision of credit services is the major function of the bank and its resources depend mainly on utilization of deferment recompense upon

provision of such service. Competence of Salam in the Islamic banking system is reflected by its flexibility and responsiveness to meet different financing needs i.e short, medium or long term financing and its responsiveness to the needs of different and various classes of customers including agricultural and industrial producers, contractors, or traders in addition to its high response to financing of operation and capital expenses.

If dealing in credit market in advanced economies takes place in a highly competitive environment, while in other countries in which competition takes place in a more flexible manner suffer from obstacles which obstruct other investment modes, this instrument (Salam contract) is regarded as an important and vital mode which secures safe entry to the markets where competition is flexible and at the same time it is capable of acquiring sufficient guarantees against normal risks of the markets like political and inflation risks.

**First Example:**

A Japanese factory for flattening and molding iron rods requires financing to purchase the required blocks of iron. It usually gets the required financing from the bank on interest on a term that extends till all its products are marketed. In this case the Islamic bank offers the necessary finance on Salam basis. In return for the provided finance the bank gets the factory products i.e. iron rods and hence timing and places of delivery are scheduled, for example they may agree that delivery should take place in the port of exportation or importation. Between the

date of contract conclusion and the date of delivery, the bank may conclude contract or contracts of Salam with other investors where the bank becomes a seller (Muslam Iliah) and hence undertakes to import iron rods similar to the rods on which he signed Salam contract with the factory for terms and conditions similar to those made with the factory or pursuant to amended conditions. The bank may instead wait to receive the rods and then sells them to importers in the country of importation or to retail traders on spot or deferred price. On the contrary it may precede in time the Salam contract which the bank executes with investors where it becomes a seller (Muslam Iliah) which undertakes to deliver iron rods of the Salam contract that it signed with the Japanese factory where the bank was a buyer (Musalam) . The bank may take a step further by concluding Salam contract with a steel factory which produces iron blocks and requires funding to purchase iron raw material where the bank undertakes to make the cash finance in exchange of suitable quantity of iron blocks to be sold to the rod factory.

**Second Example:**

Southern Cement Factory needs funding for its operation expenses. The Islamic bank offers finance in return for taking suitable quantity of cement from the factory to be delivered at a time or at different times ex- factory or at other sites. In case there is a need for gradation of cash flow for the factory a number of contracts may be concluded for this purpose simultaneously instead of one contract between the date of provision of finance and the date of delivery. The Islamic bank

may conclude Salam contracts directly with the contractors or with intermediary investor the subject of which is cement produced as per specifications of the cement which the bank contracted with the factory. The bank may also wait until it receives from the factory the cement which it undertook to deliver hence it sells it to contractors on immediate / prompt or deferred price. Contrary to the previous formula the Salam contract which the bank concludes with the factory where the bank is a buyer (Muslam) may precede in time the Salam contract where the bank is a seller for the cement (Muslam Iliah).
More details on this second example for the use of Salam contract is shown down in the following third example.

**Third example:**
Salam contract may be applied to enable the bank to finance the purchase of commodities produced by domestic factories. Then the bank sells such goods through mediators who distribute them in the local market. Implementation of this proposal requires that the bank selects carefully the goods which it trades on so that they should be of the type that can be stored for longer periods, and determines the bank's purchase price in a manner that considers the time cycle needed to sell them as well as storage and other costs in addition to taking into consideration normal price fluctuations of such type of commodities. In the time the bank concludes Salam contract to purchase goods, it concludes contracts with the distribution agents to receive goods on behalf of the bank, store them and sells them for the bank. The bank may agree with such agents to

sell the commodities on a deferred sale, while securing the suitable guarantees. Hence, the bank could have used its funds to finance purchase of goods on Salam for relatively lower prices and sells them on deferred sale, after its actual possession for relatively higher prices. This finance surrounds the commodity from both sides (Salam purchase contract and deferred sale contract for purpose of marketing) which gives the bank ample chance for efficiently investing its resources.

**Fourth Example:**

The Islamic bank may conclude Salam contract with Aramco co. of Saudi Arabia whereby Aramco undertakes to provide quantity of petrol on a particular date ex- tanker in Raas Tanura oil exportation terminal.

Between the date of execution of Salam contract, payment of price and the date agreed to deliver petrol, the bank may conclude Salam contracts with consumers directly or through intermediary investors. The bank undertakes to provide in the due date petrol with same specifications according to same or amended terms and conditions. The bank may wait until it receives the petrol and sells it to consumers for immediate, prompt or deferred price.

**Fifth Example:**

The Islamic bank purchases quantities of cement on Salam basis as described. The contract stipulates that the factory store the produced quantities of cement in its stores under the bank's name, and the bank authorizes it to sell it for the bank's benefit for an immediate or deferred price not less than that determined

by the bank. The bank may offer remuneration to the factory for selling the cement like a definite or specific amount or percentage of sale. The sale may be cash, or the bank authorizes the factory to sell on deferred basis on conditions accepted by the bank including provision of sufficient guarantees for price payment. It is worth noting that wherever Salam contract is mentioned we put into consideration adherence to Shariah controls of the contract which include among other things immediate payment of price, a condition made to avoid tricks to exploit Salam contract and divert it to usury-based financing. In the previous examples where reference was made to contrary practices, we may think that such type of dealings may be limited in practice. However, this notion is not true because there are many customers who are willing to be involved in such transactions including the independent investment portfolios of the said bank, and other banks.

It is very important to note that the banker will immediately see the difference between financing through Salam and usury-based financing. The financier in the first case (Salam contract) receives profits while the financier in second case receives interest as a return for the financing. The interest is guaranteed with specific amount whereas profit is not guaranteed and may be more or less. This difference is the true reason why Salam contract is permissible (Halal) while the interest based loan contract is prohibited (Haram). In saying that profit shall not be guaranteed it does not mean that it can not be achieved actually because the bank may by means of study and experience create favorable conditions that reinforce its confidence to achieve profit without influencing legitimacy of the contract. What

fosters confidence in achieving sizeable profit is that the return of financing which is defined as the difference between cash purchase and price of deferred sale in the normal conditions is not less than the return from interest. However upon calculation of the said difference, the amounts from storage & marketing expenses saved by the producer are also included in addition to the psychological factor which makes the producer feels secured that its produced commodity have guaranteed sale and profit. We notice in the Salam contract the easy manner in which the seller (Muslam Iliah) becomes confident that he may fulfill the Salam debt (The commodity) when its expected source of commodity failed to be secured i.e. by obtaining the commodity from other source keeping in mind that the commodity is usually a cash commodity, that type which is easily obtained or liquidated. Also, we notice the easy manner in which the buyer (Muslam) becomes confident that the seller can easily fulfill its Salam debt (the sold commodities) by taking mortgage or guarantee though this practice is prohibited by an opinion of the Hanbali school, but other opinions of Hanbali school permits it, which coincide with the opinion of other Figh schools. Hence, the Shariah board permits taking a mortgage or guarantee in return for the Salam (Commodity) debt as stated by Jurists (Fugha).

At last, we refer to the second part of the question which is the sale of Salam commodities by the bank before receiving?

If this covers a type other than that we covered in the previous three examples, and as Salam contract is a contract on a thing described on liability and not on a particular asset (Ayn) the inquirer could mean a type other than the types included in the

three examples i.e. sale of Salam contract by buyer replacing the bank so that all rights and obligations of the bank are transferred to it. This practice is not permissible because debt can not be sold before actual possession, hence should be replaced by numerous other permissible modes.

**Source:**

Al-Rajhi banking Investment Corporation, Collection of Shariah Fatwas – Resolution # 41.

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